

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000897-001 DT

05/05/2004

August 12, 2003, the court ruled in favor of Appellee, awarding him \$5,000.00 in damages and \$150.00 in costs. Appellant now brings the matter before this court, having timely filed his notice of appeal.

Issue & Analysis

The first issue concerns lack of consideration and the consequent absence of a valid contract. I am puzzled as to why Appellant would raise such an issue, as it unmistakably has no relevance to the case at hand. Appellee sued Appellant for negligence, for damages incurred when Appellant disposed of the unit. Lack of consideration is a non-issue.

The second issue is whether Appellee abandoned the property. Abandonment is an act of intentionally and voluntarily relinquishing a known right,¹ and is a matter of intention to be ascertained from the facts and circumstances which surround the transaction from which abandonment is claimed.² “Abandonment need not be expressed since it may be inferred from the conduct of the parties and the attendant circumstances.”³ Nothing in the record suggests that Appellee abandoned the unit. Rather, the record shows that Appellant allowed Appellee to store the bulky unit on Appellant’s property for an indefinite period. There is no evidence in the record that Appellant tried to contact Appellee to have Appellee remove the unit. The parties had contact with each other during the 24-month period, and Appellant knew how to contact Appellee. Appellant’s employee, Tony Degregorio, testified that he had been to Appellee’s warehouse “several times”,⁴ but that he did not try to locate Appellee at Appellee’s warehouse before disposing of the unit.⁵ Appellant’s conduct shows that it disposed of Appellee’s unit without any substantiated attempts to contact Appellee.

It is clear from the facts that the parties entered into a gratuitous bailment. A bailment was formed when Appellee delivered the unit and Appellant accepted it.⁶ In Arizona, a bailor (Appellee) can sue a bailee (Appellee) for damages to bailed property under a theory of negligence.⁷ It is well settled that, “when a person voluntarily undertakes an act, even when there is no legal duty to do so, that person must perform the assumed duty with due care and is liable for any lack of due care in performing it.”⁸ Appellant had a duty to care for the unit, yet

¹ *Mason v. Hasso*, 90 Ariz. 126, 129, 367 P.2d 1, 3 (1961).

² *Kolberg v. McKean's Model Laundry & Dry Cleaning Co.*, 9 Ariz.App. 549, 550, 454 P.2d 867, 868 (App. 1969).

³ *Id.*

⁴ Transcript, p. 31, l. 25.

⁵ *Id.*, p. 33, ll. 4-11.

⁶ *Alitalia v. Arrow Trucking Co.*, 977 F.Supp. 973, 980 (D.Ariz. 1997).

⁷ *Alitalia v. Arrow Trucking Co.*, 977 F.Supp. at 980; See *Buchanan v. Green*, 73 Ariz. 159, 238 P.2d 1107 (1951).

⁸ *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 176 Ariz. 247, 250, 860 P.2d 1300, 1303 (App. 1992); *Siverson v. Martori*, 119 Ariz. 440, 581 P.2d 285, Ariz.App. Div. 1, May 11, 1978; *Patterson v. Chenoweth*, 89 Ariz. 183, 360 P.2d 202 (1961); *Casey v. Beaudry Motor Co.*, 83 Ariz. 6, 315 P.2d 662 (1957); *State v.*

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Appellant breached that duty of care by disposing of it without notice to Appellee, and as a result, caused \$5000.00 in damages to Appellee.

After a careful examination of the record and Arizona law, I find substantial evidence to support the action of the lower court.

IT IS THEREFORE ORDERED affirming the decision of the Phoenix Justice Court - South.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix Justice Court - South for all further, if any, and future proceedings.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT